Bronx Metal Polishing Co., Inc. *and* Local One, Joint Board, Leather and Machine Workers' Union, United Food and Commercial Workers' International Union, AFL–CIO. Case 2–CA–19014

13 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 1 July 1983 Administrative Law Judge Howard Edelman issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Bronx Metal Polishing Co., Inc., Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has not excepted to the judge's conclusions that it violated Sec. 8(a)(1) of the Act.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also excepted to the judge's finding that no contract has been negotiated between the Respondent and the Union. We do not rely on that finding in reaching our decision.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge: This case was tried before me on March 10 and 11, 1983, in New York, New York.

On July 28, 1982,[1] Local One, Joint Board, Leather and Machine Workers' Union, United Food and Commercial Workers' International Union, AFL–CIO, herein called the Union, filed a charge in Case 2–CA–19014 against Bronx Metal Polishing Co., Inc., herein called the Respondent, alleging that the Respondent violated Section 8(a)(1) and (3) of the Act. On August 12, Angel Velardo, an individual, filed a charge in Case 2–CA–19045, alleging the Respondent violated Section 8(a)(1) and (3) of the Act. On September 30, 1982, Region 2 issued an order consolidating cases, consolidated complaint and notice of hearing in the above-captioned cases. On February 16, 1983, pursuant to a withdrawal request executed by Velardo, Region 2 issued an order severing cases, approving the withdrawal of of the charge in Case 2–CA–19045, and amended the complaint. The instant complaint alleges in substance that, during an organizational campaign by the Union, the Respondent, by various acts, alleged as violations of Section 8(a)(1), threatened, coerced, and restrained its employees and discharged its employee, Hector Rivera, in violation of Section 8(a)(1) and (3) of the Act.

Briefs were filed by counsel for the General Counsel and counsel for the Respondent. Upon consideration of the entire record, the briefs, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, the Respondent, a New York corporation, with its office and place of business located at 3934 Park Avenue, Bronx, New York, herein referred to as the Respondent plant or facility, has been engaged in the business of electroplating and polishing of metal parts for industrial customers. In connection with the Respondent's business operation described above, the Respondent annually provides goods and services valued in excess of $50,000, directly to enterprises located outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The Respondent admits and I find that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNION'S ORGANIZING CAMPAIGN

On June 29, the Respondent employed 15 production and maintenance employees. These employees were supervised by John Marcano, Jr., his brother Richard Marcano, and Joseph DiAngelo, who are the owners, officers, and directors of the Respondent.

On or about June 27, Juan Laboriel, general organizer for the Union, encountered several employees employed by the Respondent including Hector Rivera. He met with these employees on a public street, around the corner and out of view of the Respondent's facility. After ascertaining the employees were employed by the Respondent, he asked them whether they would be interested in union representation. They indicated they would. On June 29 and 30, Laboriel returned to the Respondent's premises. He met and discussed union benefits with a number of the Respondent's employees during their midday lunch period. These discussions usually took place around the corner, out of sight of the Respondent's facility. During this period, Laboriel received

[1] All dates are 1982 unless indicated otherwise.

signed union authorization cards from 14 of 15 unit employees including Hector Rivera.

On July 7, the Union filed a petition with Region 2, seeking an election in the unit of the Respondent's production and maintenance employees. This petition was received by the Respondent on or about July 9.

IV. CREDIBILITY RESOLUTIONS

The General Counsel called as witnesses in his direct case employees George Newby, Alfred Randall, Emmanuelle Rodriguez, and Francisco Negeura. Additionally, the General Counsel called Hector Rivera, the alleged 8(a)(3), and Juan Laboriel.

Based on my observation, I was extremely impressed with the demeanor of all the General Counsel's witnesses. Each and every witness testified in a most candid and forthright manner. In this respect, their testimony on direct examination was reasonably detailed and consistent with their cross-examination. Additionally, employees Newby and Randall are currently employed by the Respondent.

The employees' testimony established individually and collectively an intensive antiunion campaign waged by the Respondent encompassing extensive and varied acts alleged as violations of Section 8(a)(1). I find it difficult to believe that these employees, simple working men, would have the imagination or inventiveness to fabricate such testimony.

In summary, I conclude that the testimony of the General Counsel's witnesses was forthright and candid, spontaneous, consistent, and inherently probable and logical.

The Respondent's counsel called as its witnesses Richard Marcano and Joseph DiAngelo. The Respondent's counsel's examination of these witnesses in connection with the 8(a)(1) allegations alleged consisted entirely of obtaining simple denials in response to leading questions. Moreover, these questions merely tracked the 8(a)(1) allegations alleged in the complaint. The Respondent's witnesses were not questioned concerning the individual conversations described by the testimony of the General Counsel's witnesses and alleged as violations of Section 8(a)(1). Under these circumstances, I regard the testimony of Marcano and DiAngelo in connection with the 8(a)(1) allegations as no more than a general denial, to which I give little or no weight. *Staco Inc.*, 244 NLRB 461, 472 (1979).

Additionally, I was generally unimpressed with the demeanor of both Marcano and DiAngelo. Both witnesses appeared to me evasive and at times unresponsive to questions put to them on cross-examination relating to the 8(a)(1) discharge of Rivera.

Based on the above discussion, I credit the General Counsel's witnesses and find the following facts.

V. THE RESPONDENT'S ANTIUNION CAMPAIGN

Employee George Newby signed an authorization card for the Union on June 30 during the employees' lunch period. Laboriel obtained all 14 authorization cards during the employees' lunch period on June 29 and 30. Later that day, as Newby was in the dressing room at the Respondent's facility preparing to leave, Richie Marcano aproached him and stated, "You got to be careful about the signing and bringing in a union here because you guys are going to be through if you bring the union here." Newby said nothing but finished dressing and left. When Newby was questioned by the General Counsel as to the date this conversation took place, he was very definite that it took place on June 30. In this respect, he testified that he recalled the day the conversation took place as being a Wednesday, 2 days before Rivera was discharged, and at the time that Joe DiAngelo was on vacation.[2]

I conclude that Marcano's statement creates the impression to its employees that their union activities were under surveillance by the Respondent and is violative of Section 8(a)(1) of the Act. *Winco Petroleum Co.*, 241 NLRB 1118 (1979). I further find Marcano's statement constitutes a threat to discharge employees in violation of Section 8(a)(1) of the Act. *Jasta Mfg. Co.*, 246 NLRB 48 (1979).

On or about June 30, Richard Marcano summoned employee Emmanuelle Rodriguez to his office and asked him whether he was in favor of the Union or in favor of the Respondent. Rodriguez replied that he did not know. I find this conversation to constitute unlawful interrogation concerning an employee's union activities and violative of Section 8(a)(1). The fact that such conversation took place in Marcano's office increases the coercive effect of the interrogation. *TRW-United Greenfield Division*, 245 NLRB 1135 (1979).

Sometime during the first week in July, Richard Marcano approached employee George Newby at the end of the day when the employees were in the Respondent's dressing room changing clothes to leave work. At this time he told Newby in the presence of other employees that the employees had to be careful about signing union cards because they would be through if the Union came in. I find this conversation created the impression that employees' activities, namely, signing union authorization cards, were under surveillance by the Respondent, and in violation of Section 8(a)(1) of the Act. *Winco Petroleum Co.*, supra. I also find such statement to constitute a threat to discharge employees who signed union authorization cards in violation of Section 8(a)(1) of the Act. *Jasta Mfg. Co.*, supra.

On or about July 6, Joseph DiAngelo approached employee George Newby while he was working. He began cursing Newby and stated, "You guys, you're fucking me. You guys bringing in a union here, the union is no good for you, the Union can't give you more than I can give you." I find this statement to be coercive and violative of Section 8(a)(1). In this contention, the statement took place in connection with the unfair labor practices described above and below. Moreover, the statement taken in context with DiAngelo's obvious anger as evidenced by his use of profanity clearly creates in the minds of the employees a warning that they had better not join the Union. *Pontotoc Wire Products*, 220 NLRB 272 (1975). DiAngelo, continuing his conversation with Newby, told him he was going to take away the employees' vacation and that he would close the place down,

[2] It was stipulated that DiAngelo was on vacation between June 15 and July 5. Rivera was discharged on July 2.

throw the employees out, reopen the plant at another time, and hire only those employees who he wants, provided they are not in the Union. I find the threat to take away the employees' vacation made in context of his entire conversation with Newby described above to constitute a threat to the employees that they would lose their vacation benefits because of their union activities. Such a threat has traditionally been held violative of Section 8(a)(1). *Martin-Brower Co.*, 233 NLRB 876 (1977). I also find DiAngelo's threat to close the plant down, throw out the employees, reopen a new plant, and hire only those employees who would not support the Union to be a threat to close the shop and discharge employees, and violative of Section 8(a)(1) of the Act. *Woodline, Inc.*, 233 NLRB 97 (1977).

On July 6, employee Francisco Negeura was in the Respondent's office with DiAngelo. DiAngelo at this time told him he had been in business for 30 years and no union was going to come in, even over his dead body. I find such statement coercive, warning employees that the Respondent would not tolerate the Union, and violative of Section 8(a)(1) of the Act. *Keystone Pretzel Bakery*, 242 NLRB 492 (1979).

On July 8, employee Emmanuelle Rodriguez was in the Respondent's office with Joseph DiAngelo. While in the office, DiAngelo asked him if he sided with the Union or with the Respondent. For the reasons set forth above I find such conversation to constitute unlawful interrogation concerning the employees' union activities in violation of Section 8(a)(1) of the Act. *TRW-United Greenfield Division*, supra.[3]

On July 8, while working in the plant area, Newby asked DiAngelo if he would be able to take his vacation in August. DiAngelo replied, "You're going to fuck me. I am not going to give you no vacation until this Union thing is changed." I conclude this statement constitutes a threat to discontinue the employees' vacation benefits because of their union activities. I find such threat violative of Section 8(a)(1). *Martin-Brower Co.*, supra. DiAngelo then cursed at Newby and said he was going to throw the employees out. As Newby walked away, DiAngelo followed him and stated, "You want to fight? I'll take you outside and toss you out and send you to the hospital in blood." I conclude that DiAngelo's statements taken in context with the Respondent's entire antiunion campaign constitute a threat to inflict serious bodily injury on the person of an employee because of his activities on behalf of the Union. *Pyro Mining Co.*, 230 NLRB 782 (1977).

Sometime in early July, employee Alfred Randall was present in the Respondent's office with Richard Marcano. Randall told Marcano that his vacation was coming up. Marcano replied that he could not get his vacation until after the union campaign was over. I find conditioning an employee's vacation on the result of a union campaign coercive and violative of Section 8(a)(1) of the Act. DiAngelo thereafter stated to Randall that he had signed a union card. Randall denied this and left the office. I find this statement creates the clear impression of surveillance of union activities and is violative of Section 8(a)(1) of the Act. *Winco Petroleum Co.*, supra.

On July 15, Joseph DiAngelo approached Francisco Negeura at his work place. He stated to Negeura that he never should have trusted him, that Negeura had two faces. I conclude this is an obvious reference to the Union. He then called Negeura a "scum bastard" and told him he would punch him in the face. I find such statement to constitute a threat to inflict serious bodily injury on employees because of their union activities and violative of Section 8(a)(1) of the Act. *Pyro Mining Co.*, supra.[4]

Sometime around mid-July, DiAngelo approached employee Henry Mills at his machine. DiAngelo stated to him that he knew the employees who would be in his favor and would like to have him in his corner. I find such statement creates the impression of surveillance of employees' union activities, and violative of Section 8(a)(1) of the Act. *Winco Petroleum Co.*, supra. DiAngelo further stated to Mills that if the Union came in he would buy it off in some way. I find such statement has the coercive effect of creating in the minds of the employees the impression that union representation would be futile and a violation of Section 8(a)(1). DiAngelo then continued his conversation with Mills and stated that, if the Union did come in, he could put Mills on the clock. At the time Mills was the only pieceworker in the shop. All other employees were hourly paid employees. It is not disputed that as a pieceworker Mills earned more in wages than an hourly paid employee working the same number of hours. Although the evidence established that at the time this statement was made available piecework in the shop was declining and that by September there was so little piecework that Mills was laid off,[5] nevertheless, DiAngelo's statement equating the Union's successful organization with discontinuance of piecework constitutes an obvious threat to change working conditions and reduce employees' earnings because of their activities on behalf of the Union. I find such conduct violative of Section 8(a)(1) of the Act. *Devon Gables Nursing Home*, 237 NLRB 775 (1978).

Sometime in mid-July, George Newby was washing up preparing to leave. At this time DiAngelo came over to him and told Newby that he could fire him. When Newby asked why, DiAngelo replied that Joe Biugi, an employee, had told him that Newby was trying to get him to join the Union. DiAngelo then stated that he was warning Newby not to have anything further to say to Biugi. I find such conversation constitutes a threat to discharge employees because of their union activities and violative of Section 8(a)(1).

On July 30, 1982, pursuant to the petition filed on July 7, a secret-ballot election was conducted. The Union won this election, and was subsequently certified as the collective-bargaining representative for the Respondent's production and maintenance employees. To date no contract has been negotiated.

[3] Although this allegation is not specifically alleged in the complaint, it is closely related to other allegations decribed in the complaint and was fully litigated. *Omark-CCI*, 208 NLRB 469 (1974).

[4] Although this allegation was not specifically alleged in the complaint, it involves conduct closely related to unfair labor practices set forth in the complaint and was fully litigated therein. *Omark-CCI*, supra.

[5] It is not disputed that this layoff was an economic layoff.

On August 2, following the election, Francisco Negeura was in the Respondent's office with Joseph DiAngelo. Negeura, who had intended to take a vacation in August, questioned DiAngelo concerning his paid vacation. DiAngelo replied he was not going to give the employees paid vacations because he had to pay his attorney who had handled the election campaign. I conclude DiAngelo's statement constitutes a threat to eliminate the employees' paid vacations because of their union activities. *Martin-Brower Co.*, supra.[6]

About a week after the election described above, Negeura was present in the Respondent's office with Joseph DiAngelo. DiAngelo stated at this time that he would never have a union in the shop and that he was going to fire all the employees who voted for the Union one by one. I find this statement to be an obvious threat to discharge employees for their union activity and violative of Section 8(a)(1). *Jasta Mfg. Co.*, supra.

About a week after the election, Francisco Negeura was in the Respondent's office with Joe DiAngelo. Joe DiAngelo stated to Negeura that he knew that Negeura had signed a card for the Union. Negeura denied this. I find such statement creates the impression of surveillance of the employees' union activity and is violative of Section 8(a)(1) of the Act. *Winco Petroleum Co.*, supra.[7]

About 10 days after the election described above, Negeura was in the Respondent's office with Joe DiAngelo. At this point Joe DiAngelo showed Negeura a letter that DiAngelo had written which stated according to Negeura's testimony, "I want to take my vote from the Union . . . . and put it towards the employer." DiAngelo asked Negeura to sign this letter but Negeura refused. Although I question the accuracy of Negeura's testimony as to the actual contents of the letter, it appears that DiAngelo was attempting to force Negeura to sign some statement renouncing the Union. I find such conduct violative of Section 8(a)(1) of the Act. *Providence Medical Center*, 243 NLRB 714 (1979).

VI. THE RESPONDENT DENIED EMPLOYEES VACATION BENEFITS[8]

The evidence established that employees working for the Respondent for a period of 1000 hours during a calendar year were entitled to 2 weeks' paid vacation.

On July 8, George Newby asked Joseph DiAngelo if he could take his paid vacation in August. DiAngelo replied he was not going to give him a vacation until this union thing was changed. Newby testified that, in view of DiAngelo's statement, he made no further attempts to get a paid vacation. Sometime in October, Joseph DiAngelo handed Newby a vacation check for 2 weeks' pay, stating to him as he did so, "I'm giving you your vacation pay, my lawyer instructed me to do so."

Several days after Rivera's discharge on July 2, employee Alfred Randall spoke to Richard Marcano concerning his vacation and Marcano told him that he could not take his vacation until after this union thing was over. He then stated to Randall, "But you signed a Union card." Randall denied this and left the office.

Shortly after the election, employee Francisco Negeura questioned Joseph DiAngelo about his vacation pay in lieu of the vacation, and DiAngelo told him at that time he was not giving the employees paid vacation or their vacation pay because he had to pay his lawyer.

The above-described conversations establish conclusively that the Respondent discontinued its established policy of granting its employees who worked 1000 hours in a calendar year a paid vacation because of their activities on behalf of the Union. I find such action by the Respondent to be violative of Section 8(a)(1) and (3) of the Act. The extent of the violation is not diminished by the fact that the Respondent in October ultimately paid its employees their vacation pay. In this connection, it is noted that Newby intended to take a vacation in August and was deprived this August vacation because of his union activities. Randall in early July informed Richard Marcano that his vacation was due at that time and was similarly deprived of his vacation because of his union activities. Negeura also asked DiAngelo for his vacation pay in August, pointing out that he needed the money at that time, and he too was denied at that time, the money earned by him, because of his union activities.

In view of the fact that the General Counsel concedes that all vacation pay due and owing to employees during the calendar year of 1982 was ultimately paid to them in October by the Respondent, reimbursement will not be required as part of the remedy.

VII. THE DISCHARGE OF HECTOR RIVERA

On July 2, immediately prior to the employees' lunch period which was from 12:30 to 1 p.m., employees Hector Rivera, Louis Torres, and Benny Ramirez asked Richard Marcano for their paycheck. Paychecks were normally distributed on Friday at the end of the workday. The employees explained to Marcano that they wanted to cash their checks during the lunch period in order to avoid the rush at the end of the day, which commenced the Fourth of July weekend.

Rivera testified that he, Torres, and Ramirez were delayed at the bank and were unable to return to the Respondent's facility until about 1:20 p.m. On their return, the employees were met by Richard Marcano. As soon as they entered the Respondent's facility, Marcano told them they could leave; that he did not need them. Rivera asked Marcano why, and Marcano repeated they should leave, he did not need them. Rivera apologized for being late and suggested to Marcano that rather than firing them the Respondent could instead deduct the time from their pay. Marcano refused, stating that if he permitted such lateness other employees would be late in the future. The three employees then went into the locker

[6] Although this allegation was not specifically alleged in the complaint, it involves conduct closely related to unfair labor practices set forth and described in the instant complaint and was fully litigated. *Omark-CCI*, supra.

[7] This allegation is not alleged in the complaint; however, it involves conduct closely related to those allegations described in the complaint and was fully litigated. *Omark-CCI*, supra.

[8] Par. 18 of the complaint alleged that the Respondent reduced the benefits of employee George Newby by discontinuing its policy of giving him paid vacation. During the course of the hearing, the General Counsel moved to amend this allegation as follows: "In or about August, 1982, Respondent reduced the benefits of its employees including George Newby by discontinuing its policy of giving them paid vacations." This motion was granted over the objection of counsel for the Respondent.

room and changed their clothes. While they were changing, Richard and John Marcano entered the locker room. John Marcano asked what was going on and Rivera replied that Richard Marcano had fired them because they were late returning from lunch. John Marcano told Richard that he should not have done that; that he could merely deduct the time from their paychecks. The employees thereafter left the premises.

Richard Marcano's testimony is essentially the same as Rivera's, except that he placed the employees' return from their lunch period about 1:50 p.m. Employee George Newby testified that the employees returned from their lunch about 1:45. Employee Alfred Randall placed return somewhere between 1:15 and 1:20. Employee Francisco Negeura placed their return about 1:20 p.m.

It is admitted that the Respondent does not issue warnings for employee lateness. There is no Respondent rule concerning lateness.

The Respondent admits it has never discharged employees for lateness in the past, although admittedly, employees have in the past come to work or returned from their lunch period late. In this connection, Richard Marcano testified that in the past when employees came back from lunch 5 to 10 minutes late they were merely told not to do it again. They were not docked pay for the time late.

The General Counsel alleges that the discharge of Hector Rivera was discriminatorily motivated because of his activities on behalf of the Union.[9] The union activity of Rivera consisted essentially of signing a union authorization card on June 29.

The Respondent's contention as to the knowledge of union activities prior to Rivera's discharge is contrary to the evidence. In this connection, as described above, on June 30, 2 days before Rivera's discharge, Richard Marcano warned Newby that employees had to be careful about signing and bringing in a union because the employees would be through if they attempted to do so. Similarly, on June 30, Richard Marcano interrogated employee Emmanuelle Rodriguez as to whether he was in favor of the Union. These conversations, which were found to be violations of Section 8(a)(1), clearly establish that the Respondent had knowledge of the Union's campaign and had threatened employees with discharge, prior to the discharge of Rivera. Moreover, additional evidence established that the Respondent was aware of and committed other unfair labor practices prior to July 9, the date that the Respondent contends it first became aware of the union campaign. In this connection, the evidence established that, on July 6, DiAngelo told Francisco Negeura that he had been in business for 30 years and no union was going to come in over his dead body.

The timing of the discharge, 2 days after the Respondent acquired knowledge of the Union's campaign and demonstrated its opposition by threatening to discharge employees, is a factor which tends to establish a discriminatory motive for the discharge.

The Respondent's intense and extensive antiunion campaign which included unlawful interrogations, threats to close the shop, threats to discharge employees, threats to inflict severe bodily injury on the persons of employees, reduction of employee benefits, etc., clearly established the Respondent's intense union animus and is an additional factor which tends to establish a discriminatory motive for the discharge.

The Respondent's alleged reason for the discharge, Rivera's late arrival from his lunch period, appears pretextual. In this connection, the Respondent had no written rules concerning lateness. Neither Rivera nor other employees had received prior warnings either written or oral concerning lateness. Significantly, no other employees were ever discharged for lateness, although other employees over the years were similarly late.

Therefore, I conclude that based on consideration of the Respondent's knowledge of union activity prior to the discharge, the timing of the discharge, the Respondent's intense and unlawful antiunion campaign, the absence of a prior lateness by the employee, and the absence of prior discharges for the same reason, that the sole reason the Respondent discharged Rivera was because of the Union's campaign and Rivera's activities on behalf of the Union. Accordingly, I conclude that by discharging its employee Hector Rivera the Respondent violated Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by the following conduct:

(a) Coercively interrogating its employees regarding their activities on behalf of and their support for the Union.

(b) Creating the impression among its employees that it has engaged in surveillance of their union or other concerted activities.

(c) Threatening its employees with discharge if they engaged in union activities or otherwise assisted and supported the Union.

(d) Threatening its employees with physical bodily injury because of their activities for and on behalf of the Union.

(e) Threatening to close its facility if its employees selected the Union as their bargaining representative or engaged in other union activities.

(f) Threatening to eliminate paid vacation of its employees because they engaged in activities in support of the Union.

(g) Threatening to reduce the earnings of its employees if they engaged in union activities or supported the Union.

(h) Warning its employees that any attempt to seek union representation would be futile.

(i) Directing its employees to renounce their membership in and support of the Union.

[9] The discharge of Torres and Ramirez was not alleged in the complaint. Therefore, I make no findings as to whether their discharge was discriminatorily motivated in violation of Sec. 8(a)(1) and (3) of the Act.

4. The Respondent violated Section 8(a)(1) and (3) of the Act by the following conduct:

(a) Reducing the benefits of its policy of providing paid vacation benefits.

(b) Discharging and thereafter refusing to reinstate its employee Hector Rivera because he joined and assisted the Union and in order to discourage employees from engaging in union or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist from engaging in such unfair labor practices and take certain affirmative action set forth below. In this connection, the Respondent shall offer to Hector Rivera immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights or privileges. In addition, the Respondent shall make Rivera whole for any loss of earnings or other benefits he may have suffered by reason of the discrimination practiced against him. All backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner set forth in *Florida Steel Co.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962). Additionally, I shall require that the Respondent expunge from its records any reference to the unlawful discharge of such expunction to Hector Rivera and to inform him that the Respondent's unlawful conduct will not be used as a basis for further personnel actions concerning him. *Sterling Sugars*, 261 NLRB 472 (1981).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[10]

The Respondent, Bronx Metal Polishing Co., Inc., Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating its employees regarding their activities on behalf of and their support for the Union.

(b) Creating the impression among its employees that it has engaged in surveillance of their union or other concerted activities.

(c) Threatening its employees with discharge if they engaged in union activities or otherwise assisted and supported the Union.

(d) Threatening its employees with physical bodily injury because of their activities for and on behalf of the Union.

(e) Threatening to close its facility if its employees selected the Union as their bargaining representative or engaged in other union activities.

(f) Threatening to eliminate paid vacations of its employees because they engaged in activities in support of the Union.

(g) Threatening to reduce the earnings of its employees if they engaged in union activities or supported the Union.

(h) Warning its employees that any attempt to seek union representation would be futile.

(i) Directing its employees to renounce their membership in and support for the Union.

(j) Reducing the benefits of its employees by discontinuing its policy of providing paid vacation benefits.

(k) Discharging and thereafter refusing to reinstate its employees because they joined or assisted the Union or in order to discourage employees from engaging in union or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(l) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Hector Rivera full and immediate reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the discharge of Hector Rivera on July 2, 1982, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against him.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its office and place of business located in Bronx, New York, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT coercively interrogate our employees regarding their activities on behalf of and their support for the Union.

WE WILL NOT create the impression among our employees that we have engaged in surveillance of their union or other concerted activities.

WE WILL NOT threaten our employees with discharge if they engage in union activities or otherwise assist and support the Union.

WE WILL NOT threaten our employees with physical bodily injury because of their activities for and on behalf of the Union.

WE WILL NOT threaten to close our facility if our employees selected the Union as their bargaining representative or engaged in other union activities.

WE WILL NOT threaten to eliminate paid vacations of our employees because they engaged in activities in support of the Union.

WE WILL NOT threaten to reduce the earnings of our employees if they engage in union activities or support the Union.

WE WILL NOT warn our employees that any attempt to seek union representation would be futile.

WE WILL NOT direct our employees to renounce their membership in and support of the Union.

WE WILL NOT reduce the benefits of our employees by discontinuing our policy of providing paid vacation benefits.

WE WILL NOT discharge and thereafter refuse to reinstate our employees because they joined or assisted the Union or in order to discourage employees from engaging in union or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed then by Section 7 of the Act.

WE WILL offer Hector Rivera full and immediate reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

WE WILL expunge from our files any reference to the discharge of Hector Rivera on July 2, 1982, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

BRONX METAL POLISHING CO., INC.